

Leniency programme

Published: 21.09.2020.

A leniency programme* is:

an opportunity for an undertaking that is or was involved in a cartel *to be the first one to submit evidence on a voluntary basis* regarding the violation to the Competition Council and to *receive a full exemption from a fine and an exemption from the prohibition to participate in public procurement* ([Section 42., Paragraph one, Clause 6 of the Public Procurement Law](#))

an opportunity for an undertaking that does not qualify for a full exemption from a fine (because it was the instigator of the violation, the Competition Council has already initiated an investigation regarding that particular violation, or another undertaking was first to report the violation) to cooperate with the Competition Council and receive a considerable reduction in the fine

*Prohibited agreement is an agreement between market participants with the aim of impeding, restricting or distorting competition. For example, agreements on prices, tariffs or other trading conditions, including participation in procurement. A prohibited agreement may be between competitors (*prohibited horizontal agreement*) or market participants who each operate at different levels of production or distribution (*prohibited vertical agreement*). Participant of vertical prohibited agreements may also be an undertaking which is not a competitor of the parties to the agreement and which is organised such an arrangement.

*Detailed conditions for a leniency programme have been defined in Cabinet Regulations "[Procedures for the Determination of Fines for the Violations Provided for in Section 11, Paragraph one and Section 13 of the Competition Law and for in Sections 5, 6, 7 and 8 of the Unfair Retail Trade Practices Prohibition Law](#)" No. 179 (*available in Latvian only*)

Within the programme, undertakings can report the following prohibited agreements:

Horizontal agreements on: (Important! The overview is not exhaustive, as only the most classic examples are mentioned!)	Vertical agreements on: (Important! Currently, the Competition Law does not provide for reporting other types of vertical prohibited agreements within the scope of the Leniency Programme.)
the direct or indirect fixing of prices and tariffs in any manner, or provisions for their formation, as well as regarding such exchange of information as relates to prices or conditions of sale	determination of resale prices
restriction or control of the volume of production or sales, markets, technical development or investment	agreement on prohibition of restriction of passive sales
the allocation of markets, taking into account territory, customers, suppliers or other conditions	

provisions in accordance with which the conclusion, amendment or termination of a transaction with a third person is made dependent on whether such third person accepts obligations which, according to commercial usage, are not relevant to the particular transaction	
the participation or non-participation in competitions or auctions or regarding the provisions for such actions (inactions), except for cases when the competitors have publicly announced their joint tender and the purpose of such a tender is not to prevent, restrict or distort competition	
the application of unequal provisions in equivalent transactions with third persons, creating for them disadvantageous conditions in terms of competition	
action (inaction), due to which another market participant is forced to leave a relevant market or the entry of a potential market participant into a relevant market is made difficult	

Why an undertaking would need it

Participation in a cartel or a prohibited horizontal agreement is an especially severe violation of the Competition Law, which is why the maximum penalty provided for it equals 10% of the company turnover in the preceding financial year. This type of violation also causes an undertaking to be barred from participation in public procurement for three years. By being the first to notify the Competition Council of a violation, an undertaking may avoid both a significant fine and exclusion from public procurement.

The maximum amount of the penalty for participation in a prohibited vertical agreement is 5% of the company turnover in the preceding financial year.

The first undertaking may avoid both a significant penalty and exclusion from public procurement by informing the Competition Council of the infringement.

Basic principles of a leniency programme

Violations that may be reported under a leniency programme to receive an exemption from penalties



Under the programme, undertakings may report their participation in a prohibited horizontal agreement or prohibited vertical agreement. Agreements between competitors on the following are prohibited:


- the direct or indirect fixing of prices and tariffs or provisions for their formation, as well as regarding such exchange of information as relates to prices or conditions of sale;
- restriction or control of the volume of production or sales, markets, technical development, or investment;
- the allocation of markets, taking into account territory, customers, suppliers, or other conditions;
- provisions in accordance with which the conclusion, amendment or termination of a transaction with a third person is made dependent on whether such third person accepts obligations which, according to commercial usage, are not relevant to the particular transaction;
- the participation or non-participation in competitions or auctions or regarding the provisions for such actions (inactions), except for cases when the competitors have publicly announced their joint tender and the purpose of such a tender is not to hinder, restrict or distort competition;
- the application of unequal provisions in equivalent transactions with third persons, creating for them disadvantageous conditions in terms of competition; and
- action (inaction), due to which another market participant is forced to leave a relevant market or the entry of a potential market participant into a relevant market is made difficult.

Important! The examples given are not exhaustive because they are only the most common examples.

Conditions for an exemption from penalties:



- an undertaking has been the first to submit an application to the Competition Council regarding an exemption from a fine
- at the time of the application, the Competition Council does not possess sufficient evidence based on which a case could be initiated or a violation established
- the information provided by an undertaking regarding a violation is sufficient to initiate an investigation
- after the submission of the application, the undertaking has ceased its participation in the cartel forthwith, unless otherwise specified by the Competition Council
- the undertaking has immediately provided all the evidence in its possession and other details regarding the facts and circumstances relating to the cartel
- the undertaking has genuinely, actively and continuously cooperated with the Competition Council, from the time of submission of the application, to the adoption of a decision
- the undertaking has not disclosed the fact of submission of an application and cooperation with the Competition Council to the remaining members of the cartel or other parties
- the undertaking was not the initiator of the cartel and it has not performed any actions to force other undertakings to participate in the cartel


The opportunity to “book the first spot in the queue” or an application to become the first to receive an exemption from a fine: 



Given that only the first applicant receives a full exemption from a fine and an exemption from the prohibition to take part in public procurement, undertakings can “book their spot in the queue” and submit the full required information at a later time. Accordingly, an application to be assigned the first position in line for an exemption from a fine may provide an applicant with extra time in which to prepare a full application for an exemption from a fine and submit it to the Competition Council within the period specified by the latter

The additional time enables an undertaking to complete the internal investigation and to collect all the information and evidence without the added worry that another member of the same horizontal cartel may submit a full application for an exemption from a fine in the meantime

Further information on the procedures of submitting an application and the information to be included is available here for download.


Conditions for a reduction in penalties: 



If an investigation has already been initiated regarding the particular violation, and the Competition Council has enough evidence about the violation, or another undertaking has reported it first, the undertakings involved in the violation may no longer qualify for a full exemption from punishment. Similarly, the instigators of a cartel may not lay a claim to a full exemption. However, if on their own initiative they provide the Council with information that proves to be a significant proof of the violation in question, such undertakings may receive a considerable reduction in the fine:

the cartel member that is the first to submit an application for a reduction in the fine may be subject to a fine reduction of 30 to 50 per cent, while the reduction for the other members of the cartel the reduction may range between 20 and 30 per cent

in order to be able to receive a fine reduction, these undertakings, just as the first applicant, must not destroy, forge or conceal evidence relating to the cartel prior to the submission of an application. After an application has been submitted, they also have to cease their membership in the cartel immediately (unless otherwise stipulated by the Competition Council), immediately provide all the evidence they have, and genuinely, actively and continuously cooperate with the Competition Council from the time of submission of the application to the adoption of a decision. Such undertakings, may also not disclose the fact of submission of an application and cooperation with the Competition Council to the remaining members of the cartel or other parties

Protection of data identifying the applicant 



Until the adoption of a decision regarding the detection of a violation, the Competition Council maintain the confidentiality of the data identifying the member of a cartel that submitted an application regarding an exemption from a fine or an application for a reduction in the fine

In the decision regarding not establishing a violation and terminating a case, the Competition Council does not include details about the identity of the market participants that cooperated with the Council.

Application procedure

An application must be executed *in writing and submitted in person* at the Competition Council: to the Chairperson of the Competition Council or a person authorised by the Chairperson.

The application must contain the following information, to the extent it is known to the applicant at the time of submission:

- members of the cartel: names and legal addresses
 - description of the cartel: objectives, principles of operation, relevant markets of the goods, market volume, length of operation and geographic area
 - available evidence for the operation of the cartel
 - An application must be accompanied by a *written confirmation* that the undertaking and its application meets all the prescribed conditions for an exemption from a fine. A similar confirmation must also be filed when applying for a reduction in the fine (the information to be included in the confirmation has been specified in [Paragraph 32 of Cabinet Regulation No 796 of 29 September 2008](#))
 - Within five working days of the receipt of an application, the Competition Council will notify the applicant in writing whether the application has been accepted or rejected (providing the reasons for a rejection). Non-acceptance of an application does not prevent it from being resubmitted to the Council upon the rectification of any deficiencies
 - Further information on the procedures of submitting an application to be assigned the first position in line for an exemption from a fine, and the information to be included, is available here for [download](#).
-

Summary of an application for an exemption from a fine

A cartel member that has submitted, or plans to submit, to the European Commission an application for an exemption from a fine in connection with a potential *violation of the European Union competition right* submits a summary of the application for an exemption from a fine to the Competition Council. Additional information is available here: [download](#).

Why the State needs a leniency programme

Cartel formation is an especially severe violation of the Competition Law, which not only distorts competition but also harms consumers, at whose expense, in the absence of mutual competition, the members of a cartel gain additional profit by raising prices and limiting supply. In the long run, competitiveness is lost and employment opportunities shrink. Such agreements are extremely difficult to detect, as they are carefully concealed, and a leniency programme enables easier detection and prevention of violations as well as the consequences they cause.

The preventative nature of the leniency programme is also important: companies may not be willing to enter prohibited agreements knowing that their business partners could be the first to report a violation to the Competition Council, thus receiving an exemption from penalties.

<https://www.kp.gov.lv/en/leniency-programme>